IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7716 & 7717 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LALITKUMAR DALPATRAI PUJARA

Versus

VANKANER NAGARPALIKA

Appearance:

MRS DT SHAH for Petitioner No. 1-2

MR SURESH M SHAH for Respondent No. 1-2

MR MEHUL S SHAH for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 19/10/2004

ORAL JUDGEMENT

Learned advocate Mrs. D.T. Shah has filed sick note for today. Nobody has made mention of these matters

on her behalf. Learned advocate Mr. Mehul S. Shah has submitted that between the same parties, the order was passed by this Court (Coram : SK Keshote,J.) dated 22nd April, 1997 in SCA No. 7735/92; 7490/92; 7493/93 and 1431/93. Following order was passed by this court in the said matters :

"In the result, all these petitions are succeed, and the same are allowed. The respondent Nagar Palika is directed to give the benefits of the award of the Industrial Tribunal to all the petitioners from the date on which the persons having lesser service then the petitioners as daily wages or working on consolidated salary more given the benefit of regularization and regular pay scale. In case no such employee is there, then, the benefits shall be given to the petitioners from the date they completed five years service as daily wagers or on consolidated salary. The period of five years shall be counted by taking each calender year in which the petitioners have worked for 240 days or more as a year. Rule made absolute in the aforesaid terms. No order as to costs. "

Learned advocate Mr. Shah submits that the said order of this Court (Coram : SK Keshote,J.) was challenged by VANKANER NAGARPALIKA before the Division Bench of this Court by filing LPA No. 670 of 1997 and the Division Bench of this Court passed the following order on 8th October, 1998:

" The learned counsel for the appellant contended that the respondents are not liable to be regularized. It was submitted that the regularization was granted to all casual labourers and they were already regularized and were granted benefits. Perhaps, in the instant case, the respondents were not regularized as they had not acquired any right. It is conceded by he learned counsel that these respondents were also holding similar posts as the beneficiaries under the award passed by the Industrial Tribunal. It may be true that these respondents were not to be regularized with any retrospective effect. However, they are entitled to be regularized as and when the vehicles arise. Having regard to these facts, the direction of the learned single judge to absorb the respondents as and when they complete five years period is modified and we direct the appellant to

> regularize the services of the respondents as and when vacancies arise and on the basis of seniority inter se between the respondents. The learned counsel for the respondents submitted that under the impugned judgment the appellant has been directed to pay salary and allowances to the respondents from the date on which counsel points out that in Special Civil Application they did not make any such claim and the same was filed only in October, 1992. Having regard to these facts, we direct the appellant to pay salary and allowances on the basis of the pay scale from October, 1992 and the arrears be paid within three months. With the above direction, this Letters Patent Appeal is disposed of. Notice is discharged with no order as to costs. "

As submitted by the learned advocate Mr. Shah for the respondents, the order passed by the Division Bench of this Court in the said letters Patent Appeal has not been challenged before the higher forum by either of the parties and, therefore, same is applicable and binding to the parties and, therefore, parties are required to be directed to abide by the said order passed by the Division Bench of this Court dated 8th October, 1998 in LPA No. 670 of 1997.

Considering these subsequent developments took place after filing of these petitions, the order of this Court dated 8.10.1998 in LPA No. 670 of 1997 will hold field between the parties. Therefore, it is directed to the Vankaner Nagarpalika to implement the order passed by the Division Bench of this Court dated 8th October, 1998 in LPA No. 670 of 1997 in favour of the present petitioners and to pay them the benefits as a consequence thereof if not implemented so far by the Vankaner Nagarpalika. With these observations and directions, these two petitions are disposed of. Rule is made absolute in terms indicated hererinabove. No order as to costs.

(H.K. Rathod,J.)

Vyas